

CITY OF MUSKEGON  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES

March 11, 2003

Chairman S. Schiller called the meeting to order at 4:08 p.m., and roll was taken.

MEMBERS PRESENT: S. Schiller, R. Hilt, R. Schweifler, J. Clingman-Scott

MEMBERS ABSENT: C. Kufta, excused; D. Narowitz, excused; D. Newsome

STAFF PRESENT: D. Steenhagen, B. Moore, H. Griffith

OTHERS PRESENT: L. Leiter, 2984 Lakeshore.

APPROVAL OF MINUTES

A motion to approve the regular meeting minutes of February 11, 2003, was made by R. Hilt, supported by R. Schweifler and unanimously approved with the following corrections: Case 2002-25: R. Schweifler requested to have this case brought back before the commission members at the March 11, 2003 meeting ~~based on the advice of the City Attorney~~. S. Schiller asked staff ~~to notice those that need to be notified and~~ to have this case on the agenda for March.

VIDEOTAPING THE MEETING

S. Schiller stated that the City Clerk had been asked about this action and said that there has been no precedent set one way or the other. J. Clingman-Scott stated that there have been recordings of the City Commission meetings that were unofficial records of the meetings. There is obviously a precedent there. This would be an unofficial record of the meeting. S. Schiller stated that any official record of the meeting would have to be a transcript of the actual meeting. R. Schweifler agreed that a transcript would be the only official record of the meeting. Actually, either a transcript or the minutes of the meeting are the only official record of the meeting--once the minutes are approved. The clerk's tapes wouldn't be able to be destroyed until the minutes are approved. The tapes would be subject to FOIA requests if they still exist. They are part of the record if they still exist. Any other tape is not an official record of the meeting. He stated that he didn't see any reason to disallow it. The commission members agreed that there would be no problem with allowing the recording.

ELECTION OF VICE-CHAIR

S. Schiller stated that he would like to wait until there is a full body present to elect a Vice-Chairperson. He added that C. Kufta had stated that he wasn't interested in being Vice-Chair after the previous meeting.

A motion to table the election of the Vice-Chair until there is a full body present was made by J. Clingman-Scott, supported by R. Hilt and unanimously approved.

## PUBLIC HEARINGS

Reconsideration of Case 2002-25: Variance request to permit a detached garage to be placed in front of the front building line at 2984 Lakeshore Dr., by Lee Leiter. B. Moore presented the staff report. This is the case that Commissioner Schweifler requested come back before the board to continue consideration of the case because, essentially, the motion to grant the variance with conditions failed and no alternative action was taken. The ZBA does not have to vote whether or not to reconsider this action since no final action was taken (per the City Attorney). Since the public hearing was closed, it should not be reopened; the ZBA is merely continuing their deliberation. Staff did send out a notice to surrounding property owners to let them know the ZBA is continuing the discussion on this case but there is no public hearing. The subject property is located on Lakeshore Dr., west of the Balcom's Cove development and contains a residence and two existing detached garages. Recall that the applicant revised his original request and asked to demolish two existing garages on site and build one new garage in their place rather than siting the new garage closer to Lakeshore Drive. Staff is somewhat concerned that the revised request of a 1,500 square foot garage (30 by 50) is beyond the scope of what is generally seen in other neighborhoods in the city. An average two-stall garage is 24 x 24 or 576 square feet. Maximum lot coverage in the WM zone is 60% for structures. The applicant indicated that although we have seen drawings that show two parcels under his ownership, it is really one parcel so he can, therefore, make the 60% limit on lot coverage, even with a 1,500 square foot building. The Zoning Ordinance allows detached accessory structures, but requires that they be located behind the front building line of the home. In the case of the subject property, the home is located near the rear of the property, closer to Muskegon Lake, which does not leave room to place an accessory structure behind it. The two existing garages are nonconforming as they are located in the front yard.

B. Moore informed the commission members that in order for the variance to pass, there would need to be a majority vote of the members present, which would mean that 3 members would have to be in favor of it. She understood that there was concern about the usefulness of the front parcel for development if another driveway were required. However, the front part of the parcel cannot be legally split off because the split would not meet the requirements of the ordinance. The applicant did provide more information and the commission members may want to have him explain his rationale. A drawing plan for paving a new driveway through the parcel had been submitted by the applicant. R. Schweifler stated that the drawing isn't what the applicant wants to do, but instead shows that a new driveway would be expensive and would need to use part of the easement to allow a vehicle to swing into the side-loaded garage. This would cost the applicant almost \$8,000. R. Hilt stated that it looks like the swing of the driveway to the garage is because the garage doors would be facing east. If the garage doors were to face Lakeshore Dr., then there would be no worry about the swing into the garage and the easement. B. Moore stated that the commission members could change or add to staff's proposed conditions. R. Schweifler stated that the applicant would still have to pave the drive. B. Moore stated that they can't open the public meeting, but they could ask questions of the applicant if they aren't clear with the request. J. Clingman-Scott asked if the variance was granted as requested, then the

garage could still be oriented to the east. S. Schiller stated that the issue with the driveway before was that it was requested as a condition. That was why the motion did not pass. J. Clingman-Scott stated that she recalled that. Her thinking at that time was that because there is an easement, she didn't feel that it had any place in the discussion. The easement is recorded on the deed and can be used. The side-loaded garage made sense. She didn't feel that the new driveway was necessary because there was already an easement and access to the property. It would place an unnecessary burden on the applicant to have to put in a new driveway. R. Schweifler stated that, by ordinance, when you build a garage, you would have to put in a paved drive. If there is an existing unpaved drive, then it is grandfathered in. In this case, the existing drive is an easement and the commission members can't require the applicant to pave someone else's property. B. Moore stated that if the applicant were come to staff with a request for an attached garage and met all the setbacks, he wouldn't need a variance. He needs the variance because he wants a detached garage in front of the front building line of the principal structure. He would be required to pave on his property where the vehicles would be able to drive and maneuver.

R. Schweifler asked if the house had been oriented differently with the house closer to Lakeshore Dr. with the placement of the garage in the back, would he need the variance? B. Moore stated that he wouldn't. R. Schweifler stated that the only reason the applicant needs a variance is because his house is oriented toward the water and not the street. The zoning ordinance language is designed for homes that are oriented toward the street. For the ZBA to require an additional driveway, is far and above what the ordinance calls for. He also felt that this would be excessive and unnecessary. He felt based on previous discussions, that the commission members were requiring the applicant to have 2 driveways. R. Hilt disagreed with this. The members aren't requiring the applicant to request the variance. The applicant has brought in another plan and he would like to ask him a question about it. If the applicant were willing to do what was shown in the new drawing, then this would solve the problem of having to pave his neighbor's property. There are a lot of homes that face the waterfront that have garages that face the street. Some have 2 or 3 garage doors and is a common thing. Staff had asked not to have the garage doors face the street, but the garage could even face Lakeshore Dr. and have a straight driveway. There would not be a need for a bend in the driveway for access. He asked Mr. Leiter if he would be interested in turning the garage so the doors would face the street and have a straight driveway to the garage. L. Leiter stated that he wasn't interested in doing what was in the new drawing. What he was trying to show was how improbable the scenario would be. J. Clingman-Scott asked if the garage were shifted facing the road and would miss the easement entirely by having a straight driveway, would that make it more acceptable solution? L. Leiter stated that he would prefer not to build another driveway. He would like to keep the new garage in the footprints of the existing garages. His understanding when talking with staff was that the garage doors couldn't face the street. He would prefer not to cut the lot through the center with a driveway.

R. Schweifler stated that the ordinance, in the way it is written, doesn't take into consideration for waterfront properties. He gave scenarios of when a variance wouldn't be needed. The first was if the garage were attached to the home and the second, if the home were closer to the street so the garage could be placed in the back of the home. The way the zoning ordinance is written is that it negates that an individual, especially on waterfront property, would prefer to orient

there house to the rear of the property and not on the street. B. Moore stated that the variance is for the detached structure because there isn't enough room on the property to place it behind the home. R. Schweifler asked if the applicant needed a variance due to the size of the garage. B. Moore stated that the size wasn't a problem since the applicant's holdings are one lot. R. Schweifler stated that the zoning ordinance doesn't address waterfront property in that the homes usually face the waterfront with the garages facing the street. B. Moore stated that the requirement to have a detached garage in the back is a general provision for all zoning districts. R. Schweifler asked for clarification that this wasn't directed at just the waterfront marine zoning. B. Moore stated that was correct, it was a requirement in all zoning districts. The only special requirement of the property for waterfront property is the waterfront setback and the waterfront side is considered the rear. J. Clingman-Scott asked if a motion is offered and dies, could another motion be made. B. Moore stated that her understanding is that if the motion dies due to lack of support, then yes, another motion could be made. If the motion dies due to the vote, then it fails to pass. R. Schweifler added that there would need to be a material difference between the motions. B. Moore reminded the commission members that if the motion ends in a tie, it fails. The commission members also have the option to table this until there is a full board.

A motion that the variance to permit a 30 foot wide and 50 foot deep garage one hundred (100) feet from the front right-of-way line and at least three (3) feet from the western property line for the home at 2984 Lakeshore Ave. be approved, based on the following review standards (found in Section 2502 of the Zoning Ordinance): a) That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. b) That such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. c) That the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. d) That the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. e) That the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. f) That the requested variance is the minimum action required to eliminate the difficulty. Based on the following conditions: 1) The garage doors shall not front Lakeshore Drive. 2) The garage must be sided and may not be sheet metal. 3) An improved driveway (paved) must be provided to the garage from the easement. 4) The new garage may not be used for commercial purposes. 5) Both of the old garages must be removed before the building permit is issued for the new garage, was made by J. Clingman-Scott, supported by R. Schweifler and failed with R. Hilt and S. Schiller voting nay.

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#### OTHER

ZBA Bylaws - S. Schiller asked staff to research other cities to see if they have bylaws that their ZBA follows. B. Moore stated that there are other cities that have them and D. Steenhagen has been working on it.

There being no further business, the meeting was adjourned at 4:58 p.m.

hmg  
3/11/03